Minutes of Day 2 of the 99th meeting of the Board of the EHRC

01 December 2021 (13:30-17:00)
Windsor House, Westminster, London

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Attending

Commissioners

Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Suzanne Baxter; Jessica Butcher; David Goodhart; Susan Johnson; Helen Mahy; Alasdair Henderson, Mark McLane; Dr Lesley Sawers; and Su-Mei Thompson.

Officers

Marcial Boo, Chief Executive Officer
Ben Coates, Chief of Staff
Cath Denholm, Chief Operating Officer
Naomi Fawcitt, Senior Associate to the Chief Executive Officer
Melanie Field, Chief Strategy and Policy Officer
Jackie Killeen, Director of Regulation
Alix Luddington, Senior Associate to the Chair
Alasdair MacDonald, Director of Policy (item 5)
Bill Malloy, Director of Finance, Procurement, Planning, Performance & Governance

Guests

Martyn Jones, Interim Chair - EHRC Wales Committee
Oliver Ely – Government Equalities Office (GEO)

Minutes

1. Chairwoman's introduction

1.1 The Chairwoman welcomed attendees. She thanked Susan Johnson, who would be stepping down from the Board in January, for her important contribution to the Board, not least as Chair of the Audit and Risk Committee since June 2016. Susan Johnson expressed her gratitude to Commissioners and staff for their kind messages and wished the Commission well.

2. Apologies for absence

2.1 Apologies received from Pavita Cooper.

3. Declarations of interest

3.1 No new declarations were made

4. Chairwoman's update

4.1 The Chairwoman advised members that she would be making a personal contribution to the 'Freedom of speech: challenges and the role of public, private and civil society sectors in upholding rights' debate on 10 December at the House of Lords.

5. EHRC and the protected characteristic of gender reassignment

5.1 The Board considered a range of issues on the subject of gender reassignment, including conversion therapy, single-sex services and spaces, and protecting and promoting the rights of transgender people and others.

5.2 Members recognised the complexity and sensitivity of the subject, welcoming the opportunity to discuss the issues and to offer their advice and a steer on next steps. The Board recognised the many challenges that transgender people face. Members acknowledged the divisive nature of public discourse, the cross over with freedom of expression and the need for the Commission to play a confident and neutral convening role.

5.3 The Board agreed to support the separate positions agreed by the legislatures in Scotland, England & Wales regarding spousal consent. The Board endorsed the Commission's current position as established after the High Court ruling on the 9th March 2021 census, to uphold data veracity on sex and to include data on gender as and where applicable on the collection of data on both sex and gender.

5.4 The Board also agreed to argue to government for quicker access to improved services to support transgender people but not to press for other changes to the Gender Recognition Act. The Board noted that it would receive

further papers on single sex spaces and on conversion therapy at its January meeting.

5.4 **Actions:**

a) **The Policy and Regulatory teams to provide draft guidance on single-sex spaces and a response to the government consultation on conversion therapy for the January Board meeting.**
b) **The Communications team to produce a communications and stakeholder strategy on these issues.**
c) **The Legal team to glean external legal advice on the Gender Recognition Act, including its relationship with the Equality Act.**
d) **The Finance & Planning teams to incorporate suggestions on the Commission's longer-term convening role in the draft business plan for 2022/23.**

6. EHRC Strategy 22-25 consultation feedback and next steps

6.1 The Board reflected on the key themes emerging from the consultation exercise, and agreed to the proposed strategic areas of focus and which related issues should be prioritised. Members proposed changes to the document and agreed that the revised strategy document should be reviewed by the Chief Executive Officer and Chairwoman before returning to the Board in January for formal sign off.

6.2 Members asked for responsive capacity to be available to respond to emerging issues, potentially including the equality and human rights impacts of climate change. They also emphasised the need to be clear on where the Commission's resources were being focussed and to be realistic about what would be deliverable, given the tight Spending Review settlement.

6.3 **Actions:**

a) The Policy Team to produce a paper on how climate change will impact the areas of focus in the Strategy.
b) The Strategy Team to provide the Board with the detail of responses received to the strategy consultation.

7. Framework for delivery in 22-23

7.1 The Board welcomed the paper setting out how the Commission will move from signing off its 2022-25 Strategy to agreeing the details of its 2022-23 Business Plan. Members agreed the overall approach, timeline and their involvement going forward.

7.2 Members advised that the plan needed to reinforce the Commission's position as an effective regulator and to maintain focus and outcome, moving at pace and being able to make quick decisions.

7.3 **Actions:**

a) The Strategy Team to produce draft strategies for the areas of focus and set out how to reinforce the Commission's regulatory powers for the January Board meeting.
b) The Strategy Team to produce a near-final business plan for the February Board meeting.

8. Updates and assurance from Committees and Commissioner Working Groups

8.1 Board members were provided with the Scotland and Wales impact reports and draft Committee and Commissioner Working group's minutes.

8.2 The Scotland Committee Chair advised that the Committee had noted the missed opportunity to align the impact report with the "Is Scotland Fairer" report.

8.3 **Action: A small typographical error to be corrected in the Scotland Impact report. Corporate Governance Team to share updated version with Board for information.**

8.4 The Interim Wales Committee Chair noted the Welsh Government's appetite for devolved human rights legislation. Members considered the opportunities and challenges to the Commission of having differing policy positions across nations and regions.

8.5 **Actions:**
a) The Corporate Governance Team to enable the data in the Wales and Scotland impact reports to be included in future Annual Report and Accounts rather than as an individual, country-specific impact report.
b) Three Nations working to be discussed at the April Board meeting.

8.6 The People and Workspaces Committee had met on 1st November, where they had discussed: staff engagement, organisational morale; and the Pulse Survey results, noting that work was underway in the transformation programme to address the results. The ICT and estates strategies for the next 3 years was also discussed.

8.7 The Audit and Risk Assurance Committee (ARAC) Chair thanked Commissioners for taking part in the risk survey assessment and advised that the results will be presented at the next ARAC meeting in February and brought to the Board in March.

8.8 The Commissioner Working Group for Is Britain Fairer (IBF) had met on 8th November. Committee members discussed the content and chapters of the latest IBF reports, agreeing on shorter reports which focus on protected characteristics as well as or instead of policy domains, as well as changes to equality over ten years and international comparisons.

8.9 The Commissioner Working Group for Human Rights Monitoring Chair advised Commissioners that on 10th December the next tranche of content for the Human Rights Tracker assessments would be published.

9. Any other business

9.1 The Chairwoman reminded members that a presentation from 'More in Common' would take place the next day and encouraged all to join.

9.2 Board members were advised that the next Board meeting would take place virtually on 24th January 2022.